



Signed and Filed: December 27, 2021

Lewis Montali

**DENNIS MONTALI**  
**U.S. Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

ORDER DISALLOWING PROOFS OF CLAIM # 7659 AND 104538  
OF PATRICIA MCCOLM

## I. INTRODUCTION

On January 29, 2019, the Reorganized Debtors ("Debtors") filed the above-captioned bankruptcy cases. Ms. Patricia McColm filed proof of claim # 7659 ("First POC") on August 20, 2019 in the amount of \$125,000 and proof of claim # 104538 ("Second

1 POC") on May 13, 2020 in the amount of \$175,000.<sup>1</sup> The First POC  
2 mainly describes damage resulting from an alleged pre-petition  
3 trespass beyond a disputed easement, along with allegations of  
4 damages caused by both pre- and post-petition acts described  
5 below. The Second POC only describes damage resulting from an  
6 alleged post-petition trespass described below.

7 On September 9, 2021, Debtors filed their *One Hundred*  
8 *Seventh Omnibus Objection to Claims (McColm Claims)*  
9 ("Objection") (dkt. 11227). On September 24, 2021, Ms. McColm  
10 filed an *Objection and Emergency Request to Re-Set Date for*  
11 *Response and Hearing* (dkt. 11330). On September 29, 2021, the  
12 Court entered an Order (dkt. 11356) setting a hearing on the  
13 Objection for November 9, 2021 as well as corresponding  
14 deadlines for the parties to file further responses. The Court  
15 specifically requested that Debtors explain why most of the  
16 McColm Claims should not be treated as post-petition claims to  
17 be dealt with outside the bankruptcy process. On October 19,  
18 2021, Ms. McColm filed her *Response/Opposition to Reorganized*  
19 *Debtors' One Hundred Seventh Omnibus Objection to Claims (McColm*  
20 *Claims)* (dkt. 11448). On November 1, 2021, Debtors filed their  
21 *Reply in Support of Reorganized Debtors' One Hundred Seventh*  
22 *Omnibus Objection to Claims (McColm Claims)* (dkt. 11510).  
23 Debtors stated that because Ms. McColm views her claims as part  
24 of a conspiracy against her, all her claims should relate back  
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27 <sup>1</sup> While the proofs of claim appear to be solely against Debtor  
28 Pacific Gas and Electric Company, the Court deems the proofs of  
claim as against the Debtors for convenience.

1 to the alleged pre-bankruptcy conspiracy.<sup>2</sup> Prior to the hearing,  
2 Ms. McColm filed on *Objection to Reply* (dkt. 11550) which  
3 attempted to add to her proofs of claim another alleged post-  
4 petition trespass committed by the Debtors. The Court made  
5 clear at the November 9, 2021 hearing that those post-petition  
6 claims would not be allowed as a deemed proof of claim.  
7 After that hearing, the court took the matter taken under  
8 submission.

9 For the reasons discussed below, the Court SUSTAINS the  
10 Objection. There is no basis for the substance of the First POC  
11 and no jurisdiction to adjudicate the merits of the Second POC  
12 in this Court. If the State Court judgment referenced below is  
13 reversed on appeal, Ms. McColm might be able to seek relief  
14 under Fed. R. Bankr. Pro. 9024, (incorporating Fed. R. Civ. Pro.  
15 60(b)(5)), for reconsideration of the portion of the First POC  
16 over which this Court has jurisdiction.

## 17 **II. THE CLAIMS**

18 Ms. McColm is the owner of real property ("Property") in  
19 Trinity County, California. Ms. McColm and the Debtors have  
20 been locked in an ongoing dispute regarding entry onto her  
21 Property to service its utility lines. This dispute led Debtor

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23 <sup>2</sup> Debtors state: It is for this reason that the Claims are  
24 appropriately before the Court, even if some of the specific  
25 acts for which Ms. McColm seeks damages in the Claims occurred  
26 post-petition. The Claims and the Response make clear that the  
27 central focal points of Ms. McColm's dispute with PG&E are the  
28 easement and the Judgment, both of which are prepetition. The  
Reorganized Debtors should be permitted to resolve the Claims  
that stem from this long-standing prepetition dispute and  
finally put the matter behind them. (Reply, at P. 4 of 8).

1 Pacific Gas & Electric Company to file a lawsuit to determine  
2 Debtors' easement rights to the Property, in *Pacific Gas and*  
3 *Electric Company v. Patricia McColm*, Trinity County Superior  
4 Court ("State Court") Case No. 10 CV 065. On October 2, 2015,  
5 the State Court entered a judgment ("Judgment") finding that  
6 Debtor Pacific Gas and Electric Company had both a prescriptive  
7 easement to erect, access, and maintain its utility poles on the  
8 Property, and a legal right of way to which it was a successor-  
9 in-interest from a previous utility company. The Judgment also  
10 directs Ms. McColm to maintain a "reasonable distance" of no  
11 less than five feet from Debtors or agents of the Debtors  
12 performing maintenance work on the easement. Ms. McColm  
13 appealed the Judgment and maintains both that there is no  
14 easement by prescription, and any legal right of way to which  
15 Pacific Gas and Electric Company is a successor-in-interest is  
16 not situated on the Property. The appeal remains pending and no  
17 stay pending appeal has ever been entered.

18 Ms. McColm maintains her proofs of claim are based on a  
19 conspiracy to interfere with and harm her real and personal  
20 property interests. In her First POC, she describes an incident  
21 on January 23, 2019, in which agents of the Debtors entered the  
22 Property without notice and while the Judgment was "stayed" on  
23 appeal.<sup>3</sup> During this incident, the Trinity County Sheriff's  
24 Department ("Sheriff's Department") allegedly acted in concert

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26 <sup>3</sup> As previously noted, there is no indication in the record that  
27 the State Court has ever stayed its Judgment and the Court of  
28 Appeal denied Ms. McColm's request for a stay pending appeal on  
October 4, 2019.

1 with the Debtors to hinder her from moving freely on the  
2 Property while Debtors' agents allegedly traversed beyond the  
3 disputed easement area. The Debtors' agents then destroyed 17  
4 trees which did not pose a fire threat and improperly removed  
5 the lumber, while doing nothing to a tree Ms. McColm did deem  
6 hazardous.

7 The First POC also alleges that an agent of the Debtors  
8 made a series of harassing phone calls to Ms. McColm between  
9 January 2019 and June 2019; as well as an incident on June 27-  
10 28, 2019 where the Debtors entered the Property without notice  
11 or permission to perform wire work.

12 In her Second POC, Ms. McColm alleges that on November 5,  
13 2019, the Debtors again trespassed beyond the disputed easement  
14 aided by the Sheriff's Department. In this instance Ms. McColm  
15 alleges that despite a prior informal agreement between her and  
16 the Debtors to only use one specific entrance onto the Property,  
17 the Debtors purposefully used a different entrance and destroyed  
18 a gate and lock in the process. After the wrongful entry Ms.  
19 McColm again describes being limited in her movement by the  
20 Sheriff's Department, and damage to her land in the form of deep  
21 ruts caused by heavy machinery.

22 **III. DISCUSSION**

23 **A. Pre-Petition Events Described in the First POC**

24 Regarding the January 23, 2019 entry onto the Property  
25 described in her First POC, Ms. McColm has not made a showing  
26 that any work was conducted by Debtors outside the prescriptive  
27 easement described in the Judgment. The Judgment is clear that  
28 the Debtors have an easement by prescription to perform the type

1 of work described in the First POC. The Judgment is also clear  
2 that Ms. McColm was required to keep a reasonable distance from  
3 Debtors' agents performing said work. While it is unclear  
4 whether the Sheriff's Department's work to ensure Ms. McColm  
5 maintained the court-mandated distance from the Debtors' agents  
6 was procedurally proper, any such claim would need to be made  
7 against the Sheriff's Department outside of Debtors' bankruptcy  
8 cases. Through multiple filings with the Court and a  
9 presentation at the hearing on the Objection, Ms. McColm has not  
10 provided evidence to show where the boundaries of the court-  
11 drawn easement were exceeded. There is no evidence to base a  
12 finding that the Debtors overstepped any easement rights on  
13 January 23, 2019.

14 As to any alleged harassing phone calls to Ms. McColm that  
15 may have been made pre-petition, which according to Ms. McColm  
16 consisted only of fax machine-like noises, no showing has been  
17 made that Debtors were responsible for such calls.

18 In summary Ms. McColm has not sustained her burden of  
19 proving any present liability of Debtors to support any pre-  
20 petition allegations in the First POC, and this claim must be  
21 DISALLOWED.

22 **B. Post-Petition Events Described in the First and Second**  
23 **POC**

24 The entry on June 27-28, 2019 described in the First POC  
25 and the entry on November 5, 2019 described in the Second POC  
26 both occurred post-petition. Though both Ms. McColm and the  
27 Debtors are of the opinion that all incidents should be treated  
28 as pre-petition claims due to Ms. McColm's allegation of a

1 conspiracy against her, both criminal and civil conspiracy have  
2 to do with the culpability of the persons conspiring to commit a  
3 crime or wrongful act, and not to do with whether a subsequent  
4 act relates back in time to a prior act. See Cal. Pen. Code §  
5 182; *IIG Wireless Inc. v. Yi*, 22 Cal.App.5th 630, 652  
6 ("Conspiracy is not a separate tort, but a form of vicarious  
7 liability by which one defendant can be responsible for the acts  
8 of another"). The bankruptcy claims process only deals with the  
9 pre-petition liabilities of the Debtors. The conspiracy  
10 allegation appears to only matter as to attributing the  
11 potential wrongdoings of the Sheriff's Department to the  
12 Debtors, but any claim of conspiracy would not temporally link  
13 allegations of post-petition instances of trespass to similar  
14 pre-petition allegations. To the extent a criminal conspiracy  
15 is involved, the appropriate prosecuting body, and not Ms.  
16 McColm, would need to file the appropriate charges. To the  
17 extent a civil conspiracy is alleged, the Court reiterates that  
18 while it is unclear that the Sheriff's Department even committed  
19 a tort, Ms. McColm has not presented evidence of either that  
20 tort or any concerted efforts of the Sheriff's Department and  
21 the Debtors to commit such a tort.

22 The Court does not find assertions of conspiracy to be a  
23 sufficient basis to group all transgressions alleged by Ms.  
24 McColm into a single pre-petition claim. Accordingly, as with  
25 any other post-petition claim, the Court has no authority either  
26 to allow or to extinguish any liability associated with post-  
27 petition acts of the Debtors.

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1           **IV. CONCLUSION**

2           For the foregoing reasons, the Objection is SUSTAINED. The  
3 portion the First POC describing entry onto the Property on  
4 January 23, 2019, and any calls alleged to have been made to Ms.  
5 McColm pre-petition are DISALLOWED. Should Ms. McColm prevail  
6 on her appeal of the Judgment, she may be able to seek  
7 reconsideration of pre-petition portion of the First POC as  
8 noted above.

9           The portion of the First POC describing post-petition calls  
10 and entry onto the Property on June 27-28, 2019, and the  
11 entirety of the Second POC are DISALLOWED without prejudice as  
12 to Ms. McColm's right to revisit those claims in another forum.

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14                   **\*\*END OF ORDER\*\***

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